

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
The Port of Seattle	No. DE 7321

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TO: Port of Seattle  
Attention: Mr. Tay Yoshitani  
P.O. Box 1209  
Seattle, Washington 98111

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**EXHIBITS**

- Exhibit A: Port of Seattle Terminal 91 Facility
- Exhibit B: Contamination Contingency Work Plan
- Exhibit C: Releases Requiring Corrective Action (Terminal 91 Site - Known Discrete Units of Contamination)
- Exhibit D: Public Participation Plan
- Exhibit E: List of Reports Since 1998 Agreed Order

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Seattle (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to complete the work required by the 1998 Order, with modifications to reflect circumstances that have changed since the 1998 Order. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Port of Seattle, Terminal 91. The Site includes areas where releases of Hazardous Substances originating from the Terminal 91 Facility have come to be located, and is generally located at 2001 West Garfield Street, Seattle, Washington. The Site is defined by the extent of contamination caused by the releases of Hazardous Substances and may include both submerged lands and uplands. The Site, as currently known to exist, is depicted in Exhibit A to this Order. The Site is comprised of three separate and distinct areas: (1) the Tank Farm Affected Area; (2) the Submerged Lands Area; and (3) the Upland Area. The Site constitutes a Facility under RCW 70.105D.020(5).

2. Parties: Refers to the State of Washington, Department of Ecology, and the Port of Seattle.

3. Port: Refers to the Port of Seattle.

4. Discrete Unit means an area affected by the release of Hazardous Substances at Terminal 91, other than releases within the Tank Farm Affected Area.

5. Permit means dangerous waste facility permit WAD000812917, issued to the Port pursuant to 70.105 RCW, and any successor permit.

6. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

7. Tank Farm Lease Parcel consists of approximately 4 acres within Terminal 91 shown in Exhibit A. The Tank Farm Lease Parcel formerly was the site of a tank farm, demolished in 2005, which had for a time operated as a Dangerous Waste facility.

8. Tank Farm Affected Area comprises the Tank Farm Lease Parcel and any areas where Hazardous Substances originating from the Tank Farm Lease Parcel have come to be located. The term “Tank Farm Affected Area” has the same meaning that the term “Site” was given under the 1998 Order. The Tank Farm Affected Area, as believed to be located as of the date of this Order, is depicted generally in Exhibit A.

9. Terminal 91 Facility means the real property owned by the Port of Seattle encompassing approximately 216 acres and located at 2001 West Garfield Street, Seattle, Washington as depicted on Exhibit A.

10. 1998 Order means Agreed Order No. DE 98HW-N108, entered in 1998 by Ecology; the Port of Seattle (the “Port”); Burlington Environmental Inc., then a wholly owned subsidiary of Philip Services Corp. (“Philip”); and Pacific Northern Oil Corporation (“PNO”).

11. Hazardous Substances has the meaning provided by RCW 70.105D.020(10).

12. Dangerous Waste means any solid waste designated under the procedures of WAC 173-303-070 through 173-303-100 as dangerous, extremely hazardous, or mixed waste. Dangerous wastes are hazardous substances under RCW 70.105D.020(10).

13. Submerged Lands Area means that part of the Terminal 91 Facility covered by marine waters, generally located on the southern portion of the Terminal 91 Facility and adjacent to Piers 90 and 91, as generally depicted in Exhibit A.

14. Upland Area means that part of the Terminal 91 Facility other than the Submerged Lands Area and the Tank Farm Affected Area, as generally depicted in Exhibit A.

## **V. FINDINGS OF FACT**

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

1. The Site is located on the northern side of Elliott Bay generally at 2001 West Garfield Street, Seattle, Washington. The Site is located on Smith Cove and the Smith Cove Waterway on the Elliott Bay waterfront. The Site location is generally depicted in the diagram attached to this Agreed Order as Exhibit A.

2. The Site is listed on the Department of Ecology’s Hazardous Sites List as “Seattle Port Terminal 91”, under Facility Site ID No. 24768 with a hazard ranking of 1, and as “Seattle Port Terminal 91 Tank Farm”, under Facility Site ID No. 2300 with a hazard ranking of 1.

3. The Port is the current owner of the entire Terminal 91 Facility which covers approximately 216 acres, of which the Tank Farm Lease Parcel covers approximately 4 acres.

4. A tank farm was built on the Tank Farm Lease Parcel in or about 1926. The Tank Farm Lease Parcel was operated by various oil companies until December 1941 when the United States Navy took possession of the entire Terminal 91 Facility through condemnation. In about 1972, the Navy declared the Terminal 91 Facility as surplus. The Port began managing the Terminal 91 Facility, and in 1976 the Port acquired the Terminal 91 Facility. The Terminal 91 Facility remains under the Port's management and ownership at the present time. The Port removed all of the tanks and a number of buildings at the Tank Farm Lease Parcel as part of a MTCA independent interim remedial action reported in October 2005.

5. Burlington Environmental Inc. and its predecessors and successors will herein be referred to as "Philip." Philip operated the Tank Farm Lease Parcel from about June 1971, when it began leasing the Tank Farm Lease Parcel from the Port, through September 1995 when its occupancy ended. Philip operated the Tank Farm Lease Parcel as a regulated dangerous waste management facility on or after November 19, 1980, the date which subjects facilities to federal RCRA permitting requirements under 40 CFR 264 and Chapter 173-303 WAC, Washington's Dangerous Waste Regulations.

6. On November 14, 1980, EPA was notified of dangerous waste management activities on the Terminal 91 Lease Parcel when the Part A form of the RCRA permit application was filed. Pursuant to the November 14, 1980, notification, EPA issued identification number WAD000812917 for this facility. EPA received a Part B portion of the RCRA permit application to obtain a final status permit for a dangerous waste treatment, storage and disposal facility on November 8, 1988. There were numerous revisions to the draft Part B application, but the Final Status Facility Permit was issued July 22, 1992 with an effective date of August 22, 1992. The Port was named as a permittee since the Port owns the property. Active dangerous waste operations ceased at the permitted Tank Farm Lease Parcel in September 1995, and Ecology approved the above-ground closure work in 2003.

7. Hazardous Substances have been released into the environment at this Site. Hazardous Substances have reportedly been detected in either soil or groundwater at the Site

including, but not limited to, dichlorodifluoromethane, vinyl chloride, chloroethane, acetone, carbon disulfide, methylene chloride, 1,1-DCA, cis 1,2-DCE, 2-butanone, chloroform, 1,1,1-TCA, carbon tetrachloride, 1,2-DCA, benzene, TCE, 1,2-dichloropropane, 2-chloroethylvinylether, 4-methyl-2-pentanone, toluene, 1,1,2-trichloroethane, PCE, 2-hexanone, chlorobenzene, ethylbenzene, m-xylene, p-xylene, o-xylene, styrene, bromoform, 1,1,2,2-tetrachloroethane, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,2-dichlorobenzene, naphthalene, total petroleum hydrocarbons ("TPH") as gasoline and diesel, light nonaqueous-phase liquid ("LNAPL") of TPH constituents, polychlorinated biphenyls (PCBs), trichlorofluoromethane, N-nitroso-di-n-propylamine, isophorone, 2,4-dimethylphenol, 4-chloro-3-methyl-phenol, 2-methyl naphthalene, 2-nitroaniline, dimethylphthalate, 2,6-dinitrotoluene, 1,1,2-trichloro-1,2,2,2-trifluoroethane, bis (2-chloroethoxy)methane, acenaphthene, 2,4-dinitrophenol, dibenzofuran, 4-nitrophenol, fluorene, 4-chlorophenyl phenyl ether, diethylphthalate, N-nitrosodiphenylamine, pentachlorophenol, phenanthrene, anthracene, di-n-butylphthalate, fluoranthene, pyrene, chrysene, bis(2-ethylhexyl)phthalate, di-n-octylphthalate, benzo(k)fluoranthene, benzo(b)fluoranthene, 4-nitroaniline, azobenzene, 4-bromophenyl phenyl ether, benzo(a)pyrene, total chromium, total mercury, total selenium, total lead, dissolved lead, and dissolved zinc.

8. The detection of the above listed Hazardous Substances is documented in reports, including but not limited to the following:

Reports referenced in 1998 Agreed Order:

- A. Sweet Edwards/EMCON, December 1987, Property Transfer Assessment, Chemical Processors, Inc., Pier 91 Facility, Seattle, Washington;
- B. USEPA/Jacob Engineering Group Inc., April 28 1988, Draft Report, RCRA Facility Assessment, Chemical Processors, Inc., Pier 91, Seattle, Washington;

- C. Sweet Edwards/EMCON, May 1988, Phase 1 Hydrogeological Investigation, Chemical Processors, Inc., Pier 91 Facility, Seattle, Washington;
- D. Sweet Edwards/EMCON, April 24, 1989, Hydrogeological Investigation, Pier 91 Facility, Seattle, Washington;
- E. Burlington Environmental Inc., June 15, 1994, Draft Interim Measures Workplan, Burlington Environmental, Inc., Pier 91 Facility;
- F. USEPA/PRC Environmental Management, Inc., November, 4, 1994, Final RCRA Facility Assessment, Port of Seattle/Burlington Environmental Inc. Terminal 91 Facility, Seattle, Washington;
- G. Burlington Environmental Inc., February 1995, RCRA Facility Investigation Draft Report, Burlington Environmental Inc., Pier 91 Facility, Seattle, Washington; and
- H. Bimonthly Progress Reports submitted under the requirements of the EPA 3008(h) Agreed Order for RFI activities.

Reports since 1998 Agreed Order (*see* Exhibit E for list of reports).

9. In 1998, Ecology entered Agreed Order No. DE 98HW-N108 (the “1998 Order”) with the Port, Philip, and PNO (the “PLPs”).

10. In December, 2003, the State of Washington resolved certain claims against Philip relating to the cleanup of the Site in a consent decree filed in United States Bankruptcy Court, *In re Philip Services Corporation*, Bankr. S. D. Tex. (No. 03-37718-H2-11).

11. The Port has performed various remedial actions with respect to various releases at the Terminal 91 Facility pursuant to its registration in Ecology’s Voluntary Cleanup Program under the application submitted March 10, 1999. Such remedial actions were performed to address corrective action requirements imposed by the Permit, and have generally been reported to Ecology as part of the cleanup of the Upland Area.



## **VI. ECOLOGY DETERMINATIONS**

1. The Port is an “owner or operator” as defined in RCW 70.105D.020(17), of a “facility” as defined in RCW 70.105D.020(5). A Final Status Dangerous Waste Permit was issued July 22, 1992 to Philip as operator and the Port as owner of the property. Under WAC 173-303-64630(3) the Department of Ecology is requiring the owner of a facility to fulfill the corrective action responsibilities through this Agreed Order issued pursuant to the Model Toxics Control Act (MTCA).

2. Based upon all factors known to Ecology, a “release” or “threatened release” of “Hazardous Substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated July 3, 1996, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated August 15, 1996.

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of Hazardous Substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

5. The remedial actions undertaken by the Port described in Section V.11 are subsumed under this Order and shall be considered an integral part of the Work to be Performed.

6. Unless otherwise specified, Ecology will use the definitions and requirements for allowable financial assurance mechanisms set forth in the current financial assurance rules covering closure and post-closure in 40 CFR 264.141, 40 CFR 264.142, 40 CFR 264.143, 40 CFR 264.145, 40 CFR 264.151, and WAC 173-303-620 will be the definitions and requirements

for allowable financial assurance for corrective action under this Order. Ecology will apply these definitions and requirements to this corrective action, except that the words “corrective action” shall be substituted for the words “closure” or “post-closure” in the above listed regulations as needed to produce this result.

7. In the absence of final federal regulations governing financial assurance for corrective action, Ecology’s Financial Assurance Officer will use the following resources as guidance in implementing the financial assurance provisions of this Order:

- a. The Financial Assurance for Corrective Action Proposed Rule, 51 FR 37853 (October 24, 1986);
- b. The financial assurance provisions of Corrective Action for Releases from Solid Waste Management Units Advance Notice of Proposed Rulemaking, 61 FR 19432 (May 1, 1996);
- c. The Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action (U.S. EPA, September 30, 2003); or
- d. Any other guidance applicable to financial assurance and corrective action that may be available at the time.

Ecology intends to use the financial assurance provisions of the Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, 55 FR 30798 (July 27, 1990), as secondary guidance. Unless otherwise specified herein, where the language of this Order conflicts with these rules, proposed rules, notices, and guidance documents, the language of this Order will prevail.

## **VII. WORK TO BE PERFORMED**

Based on the foregoing Facts and Determinations, it is hereby ordered that the Port perform or ensure the performance of the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC (MTCA) unless otherwise specifically provided for herein.

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**A. Work to Be Performed in the Tank Farm Affected Area**

The Port's obligations in relation to the Tank Farm Affected Area are to complete work on an RI/FS and produce a draft Cleanup Action Plan ("CAP"), as contemplated in the 1998 Order. The specific work to be performed includes the following:

1. The Port shall continue the groundwater monitoring program currently being performed as required under the terms of the 1998 Order as modified by the following:
  - a. Letters from Roth Consulting to Ecology dated September 17, 1999, October 1, 2002, and February 25, 2009, and Ecology's approval letters dated October 1, 1999, October 15, 1999 (which included a correction to the October 1, 1999 letter), November 7, 2002, and February 27, 2009;
  - b. A letter from Roth Consulting to Ecology dated September 10, 2003 with respect to sampling some additional potential background wells, and approved by Ecology in an e-mail from Galen Tritt to Susan Roth on September 25, 2003;
  - c. The Final Ground Water Sampling and Analysis Plan (SAP) for the Site prepared by Philip in June 2003 and approved by Ecology in a letter dated August 22, 2003 (the quality assurance protection plan found in Appendix of this 2003 SAP has been and will continue to be followed by the Port);
  - d. A letter from Roth Consulting to Ecology dated December 13, 2004 requesting approval to add three new monitoring wells (CP\_GP08 through CP\_GP10) and Ecology's approval letter dated December 15, 2004;
  - e. A letter from Roth Consulting dated March 4, 2005 with an attached memo from PIONEER Technologies Corporation proposing to discontinue ground water sampling at selected monitoring wells beginning with the March 2005 event, and Ecology's approval letter dated April 26, 2005;
  - f. The Final Monitored Natural Attenuation Evaluation Work Plan by PES Environmental dated July 29, 2005 and approved by Ecology in a letter dated October 21, 2005;

- g. A letter from Roth Consulting to Ecology re: Request to Move Seven Wells to Semiannual Ground Water Monitoring Program, Terminal 91 Tank Farm Site, Agreed Order No. DE 98HW-N108, May 17, 2007;
  - h. A letter from Ecology to Roth Consulting re: Request to Move Seven Wells into the Semiannual Groundwater Monitoring Program, Terminal 91 Tank Farm Site Agreed Order No. DE 98HW-N108, May 24, 2007;
  - i. A letter from Roth Consulting to Ecology re: Proposal for Modification of Ground Water Monitoring Program, Terminal 91 Tank Farm Site, Agreed Order No. DE 98HW-N108, first transmittal December 2, 2008 and final transmittal February 24, 2009; and
  - j. A letter from Ecology to Roth Consulting re: Proposal for Modification of Ground Water Monitoring Program, Terminal 91 Tank Farm Site, Agreed Order No. DE 98HW-N108, February 27, 2009.
- 2. Continue to implement the Final Feasibility Study ("FS") Work Plan that was submitted to Ecology on August 26, 2005 and approved by Ecology in a letter dated September 7, 2005, as supplemented by further work approved by Ecology.
  - 3. The Port has submitted to Ecology-NWRO a final draft FS. This draft will be put out for a 45 day public comment period. Ecology may request changes based on public comments it receives.
  - 4. After Ecology review and approval of the final FS report, and if required by Ecology, the Port shall submit a draft cleanup action plan ("DCAP") addressing the Tank Farm Affected Area to Ecology-NWRO within ninety (90) days of receipt of formal notification of such requirement by letter. The notification shall identify the preliminary cleanup alternative chosen by Ecology. The DCAP shall meet the requirements of WAC 173-340-360, -400(1) through (9), -410, as well as WAC 173-303-646.

5. The performance of any work described in any DCAP required by Ecology shall be the subject of an amendment to the Agreed Order or a new Agreed Order or a Consent Decree.

6. The Port shall submit status reports to Ecology-NWRO quarterly, continuing the schedule that was required by the 1998 Order (i.e., on or before January 20, April 20, July 20, and October 20 of each year), and continuing until all of the requirements of this Order are completed to Ecology's satisfaction. The submittal shall be due on the 20th day of the month following the three-month activity period. The Port shall include the following in each status report, with respect to the Tank Farm Affected Area:

- a. All work conducted pursuant to this Agreed Order during the last three month period;
- b. Occurrence of any problems, how problems were rectified, deviations from the workplans and an explanation of all deviations;
- c. Projected work to occur in the upcoming three months;
- d. Summaries of significant findings, changes in personnel, summaries of significant contacts with all federal, state, local community, and public interest groups;
- e. Any groundwater monitoring program laboratory analyses, not separately reported, (as copies of the original laboratory reporting data sheets, and in tabulated data format) for which quality assurance procedures are completed during the three month period;
- f. All field measurements from any such groundwater monitoring events;
- g. Tabulations of groundwater data from such events showing specific groundwater monitoring well, sample collection date, and constituent concentration;
- h. Groundwater contour maps for the shallow aquifer for such monitoring events; and

- i. An LNAPL thickness map for any such monitoring events, using results of Site baildown tests as appropriate to correct for apparent LNAPL thickness observed in wells.
7. The Port shall annually submit an analysis report covering groundwater data from the Tank Farm Affected Area to Ecology NWRO. The annual report for the preceding calendar year will be due to Ecology each year on February 20. The annual groundwater data analysis report shall at a minimum:
  - a. Present analytical data for groundwater monitoring wells using tables (for all data and summary) and graphs (for representative groundwater monitoring wells and chemical constituents);
  - b. Construct hydrographs for representative groundwater monitoring well showing date of measurement and groundwater elevation;
  - c. Graph monthly precipitation data from the Site or from the closest rain gauge monitoring station to the Site; and
  - d. Evaluate the seasonal effects on the groundwater data, contaminant plume characteristics, impacts of Interim Measures on the LNAPL, constituents that are migrating from the Site, an estimate of the rate of transport, and any revisions to the conceptual model.
8. If data gaps exist, then either Ecology or the Port may propose additional work to fill the data gaps subject to Section VIII.L of this Order. If the parties cannot agree on the need for additional work to fill data gaps, this would trigger the conflict resolution protocol described under Section VIII. J.
9. The Port may conduct remedial actions with respect to unanticipated discoveries encountered within the Tank Farm Affected Area in compliance with the Contamination Contingency Plan (Exhibit B).

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**B. Work to Be Performed in the Submerged Lands Area**

To the extent that Hazardous Substances are discovered in the Submerged Lands Area, the Parties agree that, based on current understanding, it is not practicable at this time to address any such contamination. Additional information would be required to do so, for example, identifying and addressing sources potentially contributing to such contamination, including sources such as stormwater that originated from other industrial properties in the area surrounding the Terminal 91 Facility. Accordingly, any remedial action that might be necessary in the Submerged Lands Area is deferred for the time being. The necessity for, and the practicability of, remedial action in the Submerged Lands Area will be reevaluated at the time a CAP is issued for the Tank Farm Affected Area.

**C. Work to Be Performed In the Uplands Area**

1. For Known Discrete Units of Contamination: For releases of Hazardous Substances in the Uplands Area of which the Port is aware as of the effective date of this Order, the Port has the obligations identified below. These Known Discrete Units of contamination are identified and listed in Exhibit C hereto.

a. For Known Discrete Unit A.1 (*see* Exhibit C), Ecology finds that this area does not pose an immediate threat to human health and the environment. Accordingly, remedial action for this area shall be done in conjunction with the Port's redevelopment in this area. If the Port has not initiated redevelopment and remedial actions in this area within ten (10) years of the effective date of this Order, the Port shall conduct the remedial actions regardless of the status of the Port's redevelopment. Such work shall be conducted, reported and evaluated as described in Subsection VII. C.1.b.

b. For Known Discrete Units B-18, B-22, and B.28 through B.37 (*see* Exhibit C), the Port shall:

1) Submit a work plan (or other appropriate documentation needed for completion) to Ecology for addressing the contamination within a time

frame agreed to by Ecology. Any such work plan, once approved in writing by Ecology, becomes an integral and enforceable part of this Order. The scope and detail of any such work plan shall be commensurate with the scope and complexity of the appropriate cleanup action necessary, and should be submitted for review, and when appropriate, approval by Ecology.

2) Within ninety (90) days of completing the approved remedial action, the Port shall submit a written report describing the actions taken.

3) Ecology shall evaluate such remedial actions to determine whether they meet the substantive requirements of Chapter 173-340 WAC and whether Ecology believes that further remedial action is necessary.

2. For Newly Discovered Discrete Units of Contamination in the Uplands Area:

a. Section VIII.L requires formal amendment of this Order in the event of “substantial” changes to the work to be performed, with “minor” changes to be documented without formal amendment. For purposes of releases under this subsection VII.C.2, additional work to address them shall be considered “substantial” if the releases are of a kind that would generally be addressed under an agreed order in their own right. Based on previous investigations and site history at the Terminal 91 Facility, non-exclusive examples of minor releases and/or remedial actions in the Upland include:

- 1) releases subject to the Contamination Contingency Plan;
- 2) closure, site assessment, and remediation of releases from USTs used for petroleum storage (subject to language in example 5);
- 3) releases affecting soil but not groundwater;
- 4) routine disposal of contaminated soil excavated as part of construction activities;



- 5) releases affecting groundwater in which the only hazardous substances over cleanup levels are petroleum-related and the extent of the contamination plume does not appear to be extensive;
- 6) removal of accumulated petroleum product from excavation water in cases where construction excavations extend below the water table;
- 7) installation and operation of product recovery/product monitoring wells or other structures such as product recovery/product monitoring vaults;
- 8) application of ORC™ or other commonly used remedial products to ground water to assist in degrading petroleum constituents; and
- 9) cleaning, decommissioning in place, and/or removal of underground fuel pipelines.

b. For contamination discovered in the context of Port construction activities that is a reportable release under WAC 173-340-300, the Port will follow the Contamination Contingency Work Plan, attached as Exhibit B hereto. The Contamination Contingency Plan is an integral and enforceable part of this Order.

- 1) Within ninety (90) days of completing a remedial action under the Contamination Contingency Plan, the Port shall submit a written report describing the actions taken.
- 2) Ecology shall evaluate such remedial actions to determine whether they meet the substantive requirements of Chapter 173-340 WAC and whether Ecology believes that further remedial action is necessary.
- 3) If a remedial action the Port conducts under the Contamination Contingency Plan is an interim action as defined in WAC 173-340-430, any final cleanup action for the contamination addressed under the interim action shall be conducted under the procedures in either subsection VII.C.1.a or VII.C.1.b. Ecology and the Port shall consult to determine

which subsection's procedures the cleanup action will proceed under, and shall update Exhibit C to include the newly-discovered Discrete Units in accordance with Section VIII.L, through either the informal or formal process. In the event the Port and Ecology disagree, Ecology shall make the final decision, subject to dispute resolution under Section VIII. J.

c. For newly-discovered Discrete Units of contamination the Port finds outside the context of construction, the Port shall address the newly-discovered contamination under the procedures in either subsection VII. C 1. a or VII. C 1. b. Ecology and the Port shall consult to determine which subsection's procedures the cleanup action will proceed under, and shall update Exhibit C to include the newly-discovered Discrete Units in accordance with Section VIII.L, through either the informal or formal process. In the event the Port and Ecology disagree, Ecology shall make the final decision, subject to dispute resolution under Section VIII. J.

d. The Port's obligations to address newly-discovered contamination pursuant to Subsection VII. C 2 are subject to relief if the Port demonstrates that the contamination is the result of a plume for which the Port would not be considered an "owner" pursuant to RCW 70.105D.020(17)(b)(iv) (or similar provision granting relief for the owner of land affected by a migrating plume of Hazardous Substances).

**D. General Requirements Applicable to All Work Performed Under This Section**

The Port shall follow the reporting guidelines in WAC 173-340-840 for all parts of this Order unless otherwise agreed to by both Ecology and the Port in writing. All data generated pursuant to this Order shall be submitted to Ecology-NWRO, including all outlier and duplicate data. In addition, all sampling data generated pursuant to this Order shall be submitted to Ecology-NWRO as copies of the original reported laboratory data sheets, in tabulated data format and in an electronic format approved by Ecology for all referenced environmental media.

Laboratory detection limits and practical quantitation limits shall be reported for each constituent concentration detected.

**E. Deliverables**

Once approved in writing by Ecology, all deliverables the Port submits to Ecology under this Order are incorporated by reference and become enforceable parts of this Order, as if fully set forth herein. During the performance of work under an approved deliverable, field modifications to the submittal may be agreed to orally by the Project Coordinators. In such case, the Port shall submit a description of the field modification to Ecology's Project Coordinator in writing within seven (7) days after the oral agreement, and Ecology's Project Coordinator shall provide written confirmation of the agreed modification. Such field modifications would be subject to VIII.L's terms concerning amendments to the Order.

**F. Remedy for Insufficient Progress**

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may, after providing written notice and a reasonable opportunity to cure, complete and issue the final deliverable.

**VIII. TERMS AND CONDITIONS OF ORDER**

**A. Public Notice**

RCW 70.105D.030(2)(a) and WAC 173-340-600(11)(c) require that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

**B. Remedial Action Costs**

The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and

Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Port shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

**C. Implementation of Remedial Action**

If Ecology determines that the Port has failed without good cause to implement the remedial actions, in whole or in part, Ecology may, after notice to the Port, perform any or all remedial actions required by this Order that remain incomplete. If Ecology performs all or portions of such remedial actions because of the Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B. (Remedial Action Costs), provided that the Port is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions. Ecology concurs with remedial actions done in compliance with the Contamination Contingency Plan (Exhibit B).

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**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Name: Galen H. Tritt  
Address: Department of Ecology-BFO  
1440 10<sup>th</sup> Street, Suite 102  
Bellingham, WA 98225  
Phone: (360) 715-5200  
FAX: (360) 715-5225  
E-mail: [gtri461@ecy.wa.gov](mailto:gtri461@ecy.wa.gov)

The project coordinator for the Port is:

Name: Susan Roth  
Address: Roth Consulting  
6236 27th Avenue N.E.  
Seattle, WA 98115-7114  
Phone: (206) 617-2176  
FAX: (206) 523-3155  
E-mail: [susanjroth@comcast.net](mailto:susanjroth@comcast.net)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

This Order's terms regarding persons performing "work required by this Order" apply only to persons who expressly undertake responsibility for performing such work, and not to Agents/Contractors/Subcontractors of the Port who may take incidental actions subject to the Order as a result of addressing contamination encountered during construction or utility work.

1. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all

work undertaken by such agents, contractors, and subcontractors complies with this Order.

2. All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

3. All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

4. All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

5. Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The Port shall notify Ecology in writing of the identity of any engineering, geology contractor and subcontractor firms and other firms to be used in carrying out the terms of this Order in advance of their involvement at the Site.

#### **F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the Port either owns, controls, or has access rights to at all reasonable times, consistent with federal law, for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and

verifying the data submitted to Ecology by the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s), and with any applicable federal law, such as that regulating access for homeland security purposes. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Port shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of collecting samples at the Site pursuant to this Order; provided, however, that Ecology may waive this notification requirement and accept samples where they were collected during construction projects or other circumstances where sampling was prudent or necessary but unplanned; and provided further, sampling conducted pursuant to the approved Contamination Contingency Plan (Exhibit B) shall not require separate reporting as a result of this subsection. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the Port or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under

Section VIII. F of this Order, Ecology shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

#### **H. Public Participation**

A Public Participation Plan is required for this Site. The approved Public Participation Plan is attached as Exhibit D.

Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, if they concern implementation of this Order, and before any such major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments, all to the extent they concern implementation of this Order. For all Port press releases, fact sheets, meetings, and other outreach efforts that concern implementation of this Order that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.



4. Except as provided by the approved Public Participation Plan (Exhibit D), when requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. On Ecology's website which is freely accessible to the public.
- b. Department of Ecology-NWRO  
3190 160th Avenue S.E.  
Bellevue, WA 98008-5452
- c. Seattle Public Library  
1000 4th Avenue  
Seattle, WA 98104

At a minimum, electronic copies of all public notices, fact sheets, and press releases that concern implementation of the Order; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of remedial actions required by this Order shall be promptly placed in these repositories.

**I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order. Upon request of Ecology, the Port shall make all such records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. B. (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

- a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Hazardous Waste and Toxics Reduction Section Manager, Northwest Region Office, within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

#### **K. Extension of Schedule**

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII. L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII. M (Endangerment).

**L. Amendment of Order**

The project coordinators may orally agree to minor changes to the work to be performed without formally amending this Order. In such a case, the Port shall submit a description of the minor changes to Ecology's Project Coordinator in writing within seven (7) days after the oral agreement. Minor changes will then be documented in writing by Ecology within seven (7) days after Ecology receives the Port's written description.

Except as provided in Section VIII. N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Port. The Port shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. J (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the Port shall provide Ecology with documentation of the basis for the

determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this Section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**N. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order or the 1998 Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

**O. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in the Tank Farm Affected Area shall be consummated by the Port without provision for

continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in the Tank Farm Affected Area likely to substantially affect the performance of work under this Order, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least fourteen (14) days prior to any such transfer, the Port shall notify Ecology of said transfer. For purposes of this provision, only those property interest transfers that involve planned capital improvements (for example, such as excavation or pile driving) shall be considered likely to substantially affect the performance of work under this Order. Upon transfer of any such interest, the Port shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.

2. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals.

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult

with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the Port shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Financial Assurance**

1. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when the Port's actions and submissions meet the requirements of WAC 173-303-64620.

2. The Port must submit the executed or otherwise finalized financial assurance instruments or documents to Ecology's Financial Assurance Officer. In addition, the Port must also submit copies of financial assurance instruments or documents to Ecology's Project Coordinator.

3. Within sixty (60) days from the effective date of this Order, the Port shall submit to Ecology for review and approval a written cost estimate to cover the following activities at the facility: completion of the final feasibility study, submission of a draft CAP, implementation of the final CAP, and post cleanup monitoring at the Site. If Ecology rejects the Port's cost

estimate as submitted, Ecology shall provide to the Port a revised cost estimate amount that will be the approved cost estimate. Ecology will, if requested by the Port in writing, provide a written explanation of the variance between the Port's proposed cost estimate and Ecology's approved cost estimate. If Ecology does not accept, reject, or revise the Port's cost estimate within sixty (60) days after submittal, the Port's cost estimate will be deemed approved for purposes of this paragraph. Ecology reserves the right to review and revise the Port's cost estimate after the 60-day review period. If Ecology revises the the Port's cost estimate after the 60-day review period, the Port will have thirty (30) days after the revision to provide an updated financial assurance instrument. Within thirty (30) days after Ecology's final approval of the Port's cost estimate amount or the Port's receipt of Ecology's final approval of the Port's cost estimate amount, the Port shall establish and maintain continuous coverage of financial assurance in the amount of the approved cost estimate and submit the applicable financial assurance documentation per paragraph 2, provided, however, that if the Port uses the financial test mechanism, such documentation shall be timely if submitted within one hundred fifty days (150) of the end of the Port's next fiscal year.

4. If the Port is required to submit an additional work plan(s) under this Order, or to conduct activities related to corrective action not previously part of the original cost estimate, the process outlined in paragraph 3 shall be used to submit a revised cost estimate concurrent with the submission of an additional work plan(s).

5. If the Port believes that the estimated cost of work to complete activities under this Order has diminished below the amount covered by existing financial assurance provided under this Order, the Port may submit a written proposal to Ecology to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining work to be performed. The written proposal shall



specify, at a minimum, the cost of the remaining work to be performed and the basis upon which such cost was calculated. If Ecology decides to accept such a proposal, Ecology shall notify the Port of its decision in writing. After receiving Ecology's written decision, the Port may reduce the amount of financial assurance only in accordance with and to the extent permitted by such written decision. Within thirty (30) days after receipt of Ecology's written decision, the Port shall submit the applicable financial assurance documentation per paragraph 2. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized under this paragraph.

6. Within thirty (30) days of written notice of Ecology's selection of a final remedy, the Port shall prepare a detailed written estimate of the cost for the remaining amount of work to be completed under this Order including, but not limited to, the final remedy, and submit the same to both Ecology's Financial Assurance Officer and Project Coordinator for review and approval. The process outlined in paragraph 3 shall apply in the submission process of cost estimates.

7. All cost estimates must be based on the costs to the owner or operator of hiring a third party to complete the work. A third party is neither a parent nor a subsidiary of the Port. On a case-by-case basis, Ecology may also determine that a company which shares a common higher-tier corporate parent or subsidiary might not qualify as a third party. A cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, facility structures or equipment, land, or other assets associated with the facility. The Port may also not incorporate a zero cost for wastes that might have economic value.

8. The Port shall annually adjust all cost estimates for inflation. Adjustments for inflation shall be calculated in accordance with the procedure outlined in 40 CFR 264.142(b).

9. Acceptable financial assurance mechanisms are trust funds, surety bonds, letters of credit, insurance, the financial test, and the corporate guarantee. Ecology may allow other financial assurance mechanisms if they are consistent with the laws of Washington and if the Port demonstrates to the satisfaction of Ecology that those mechanisms provide adequate financial assurance.

10. If the Port is using the financial test or corporate guarantee to meet their financial assurance obligation, the annual inflationary adjustment shall occur within one hundred fifty (150) days after the close of the Port's fiscal year. If the Port is using any mechanism other than the financial test or corporate guarantee, this adjustment shall occur each year within thirty (30) days after the anniversary of the effective date of this Order.

11. If the Port seeks to establish financial assurance by using a surety bond for payment or a letter of credit, the Port shall at the same time establish and thereafter maintain a standby trust fund acceptable to Ecology into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by Ecology, pursuant to the terms of this Order.

12. The Port shall notify Ecology's Project Coordinator and Financial Assurance Officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the Port as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if it is named as debtor as required under the terms of the corporate guarantee.

a. Once the Port has established financial assurance with an acceptable mechanism, as described above, the Port will be deemed to be without the required financial assurance:

1) In the event of bankruptcy of the trustee or issuing institution; or

2) If the authority of the trustee institution to act as trustee has been suspended or revoked; or

3) If the authority of the institution issuing the surety bond, letter or credit, or insurance policy has been suspended or revoked.

b. In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the Port must establish a replacement financial assurance mechanism by any means specified in WAC 173-303-620 or other financial instrument as approved by Ecology within sixty (60) days after such an event.

13. Ecology's Financial Assurance Officer is:

Name: Kimberly Goetz  
Address: Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
Telephone: (360) 407-6754  
FAX: (360) 407-6715  
E-mail: kgoe461@ecy.wa.gov

## **R. Indemnification**

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

## **IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port has complied with all other provisions of this Order.

## **X. TERMINATION OF 1998 AGREED ORDER**

This Order supersedes the 1998 Order and the 1998 Order is terminated by letter from Ecology dated \_\_\_\_\_.

## **XI. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

2. Civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

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Effective date of this Order: \_\_\_\_\_

PORT OF SEATTLE

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By \_\_\_\_\_  
Tay Yoshitani  
Chief Executive Officer

By \_\_\_\_\_  
Julie Sellick  
Section Supervisor  
Hazardous Waste and Toxics Reduction  
Northwest Regional Office